

MINUTES
Supreme Court's Advisory Committee
on the Rules of Criminal Procedure

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114

January 17, 2017

ATTENDEES

Patrick Corum - Chair
Professor Jensie Anderson
Jeffrey Gray
Blake Hills
Judge Elizabeth Hruby-Mills
Craig Johnson
Maureen Magagna
Judge Brendan McCullagh
Ryan Stack
Cara Tangaro
Douglas Thompson
Judge Vernice Trease

EXCUSED

STAFF

Brent Johnson

I. WELCOME/APPROVAL OF MINUTES

Patrick Corum welcomed the committee members to the meeting. Mr. Corum next discussed the September 20, 2016 minutes.

Cara Tangaro moved to approve the minutes with no corrections. Judge Brendan McCullagh seconded the motion. The motion carried unanimously.

II. RULES 4, 4A, 4B, 6, and 29 PUBLISHED FOR PUBLIC COMMENT

Mr. Corum next discussed the comments received for rules 4, 4A, 4B, 6 and 29. The committee discussed each of the comments received and all of the concerns were addressed. Brent Johnson noted rule 6 was already approved by the Supreme Court subject to the comment period. Jeffrey Gray said he was concerned with rule 6 where it allows a summons to be sent by mail to the defendant's last known address. The committee discussed possibly changing the wording on failures to appear. Mr. Gray said service by mail doesn't seem to be an adequate

manner to notify defendants of their cases. Mr. Gray noted the rule is clearly written for appearance by summons. After brief discussion, the committee made adjustments to rule 6.

Judge McCullagh moved to approve rules 4, 4A, 4B, and 29 to be sent to the Supreme Court for final approval. Craig Johnson seconded the motion. The motion carried unanimously. Judge McCullagh will revise rule 6 and distribute it to the committee.

III. LOGUE V. COURT OF APPEALS SUBCOMMITTEE UPDATE

Brent Johnson addressed this subcommittee. Mr. Johnson said the Supreme Court would like to see this committee provide two members to join the subcommittee. Judge Vernice Trease proposed one prosecutor and one defense attorney. Professor Jensie Anderson said she would volunteer as the defense attorney. Jeffrey Gray volunteered as the prosecutor. Mr. Johnson said someone will contact them to provide details.

IV. PRETRIAL PROCEDURE RULES (RULES 7, 7A, 7B, 7C, 7D, 9, and 9A)

Mr. Corum said the pretrial release committee will be engaged in a pilot pretrial release assessment program in multiple counties. They are requesting release determinations be made within 24 hours of arrest. Mr. Corum noted there is already a rule in place for warrantless arrests. However, there needs to be an amendment to allow for this on arrests pursuant to warrants. Judge McCullagh explained the rules as they should be to meet the Arnold standards. Mr. Corum said this study is taking place in the next few months. It will be based on a non-interview process. There is an OTN created then a score being generated based on data received. Mr. Corum said rule 7 needs to be addressed by this committee fairly quickly, even by email or an added meeting. Judge McCullagh noted the study will be in Davis and Utah counties. Judge Trease asked how this will affect those individuals who are not initially booked. Mr. Corum explained that the rules will help address that. Judge McCullagh said the problem of fail-to-files is mostly in Salt Lake County. Judge McCullagh explained the current process and issues the county is facing. Judge McCullagh noted there will be an Arnold score eventually done in Salt Lake County. However, for now, it will only be in Davis and Utah counties. Douglas Thompson asked if the jail will have any authority to make a determination on the Arnold score. Mr. Corum said they will not have authority. It will remain as a judicial determination.

Mr. Corum asked how this affects Salt Lake County. Judge McCullagh said currently the jail gives a list of individuals who have been arrested. Judge McCullagh noted there is already probable cause but the judge needs to determine release conditions. Judge McCullagh said he would like to see the rule go out for comment but would like to see the effective date of the rule be the same as when the program begins. Mr. Corum said the courts have stated they will be able to link the information with the scores. Judge McCullagh said because the system is not in place yet he did not feel comfortable adding to the rule information consistent with the Arnold score until the system is in place.

Judge McCullagh explained his rule proposals in comparison to Doug Thompson's proposed rule. Mr. Thompson felt like the committee should meet somewhere in the middle between the 24 hour and 96 hour rule. Mr. Thompson believes the majority of the cases can be

filed within that amount of time. Judge McCullagh explained rule 7 governs when a case has been filed, where rule 9 addresses processes for persons who have been arrested prior to filing. There was discussion on how long people have been held. Ms. Tangaro said in Utah County she has seen people held for seven days. She further said that because there is no case number for those individuals she is unable to find information on their status.

Judge McCullagh said the rule addresses court procedures, not procedures for magistrates. Judge McCullagh said when individuals are detained when no information has been filed then technically there is no court yet. Judge McCullagh said rule 7 will apply to cases already filed and rule 9 will apply to individuals who have been arrested prior to filing. Judge McCullagh believes the 24-hour rule should apply to both. He further believes the 24-hour clock should run concurrently with the four-day clock. Therefore, if an information has not been filed within four days, the individual should be released. The committee agreed to changes to rule 9. The committee amended the rule to accommodate for the current practices in both Salt Lake and Utah Counties. Maureen Magagna noted Weber County is following the same processes as Utah County. Ms. Magagna said the numbers are fairly low for failure-to-file cases. Ms. Tangaro noted Weber County follows the bail schedule.

Mr. Thompson said Utah County created their own rule for 4 days, not counting the day a person was booked before the first appearance. Judge McCullagh said they are not trying to prohibit any current practices, but instead, they are seeking to address individuals who have been in jail for a considerable amount of time. The committee questioned how the jails would know when an information is filed. Judge McCullagh said the courts send the warrant over to the jail. Ms. Tangaro suggested the committee research what is happening and what the judges would like to see happen. Ms. Tangaro said Joanna Landau is researching indigent defense procedures.

Judge McCullagh will revise rule 9 and email it to the committee this week. Mr. Thompson will assist Judge McCullagh with proposed amendments. Judge McCullagh will not make changes to 7A, 7B, 7C, or 7D according to discussions. Judge McCullagh said rule 9A will also remain as is.

V. POST-JUDGMENT SANCTIONS RULE

Judge McCullagh stated he would like to discuss this at a later time, after rules 7 and 9 are complete.

VI. RULE 24(d)

Mr. Johnson said this rule will be discussed at a later time.

VII. OTHER BUSINESS/ADJOURN

Mr. Thompson noted he along with other committee members are on a special circumstance instructions subcommittee for the rules of evidence. Blake Hills said the Supreme Court gave direction for this subcommittee. The Supreme Court asked them to write rules related to special circumstances, such as preconceived notions of jurors. Professor Anderson

noted the NED just released a report on this. Craig Johnson said they would review that information. Professor Anderson said this is being addressed all over the nation. Specifically Salt Lake City police have adopted the best practices report. Mr. Thompson said Linda Jones is the person to contact if anyone wants more information on the subcommittee.

With there being no further issues, the meeting adjourned at 1:30 pm. The next meeting will be held March 21, 2017.